

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBIN R. MARSHALL, individually and on
behalf of all other similarly situated,

Case No.: 1:19-cv-04788-DLI-SMG

Plaintiff,

v.

FINANCIAL RECOVERY SERVICES, INC.,

Defendant.

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ANSWER OF FINANCIAL RECOVERY SERVICES, INC.

Defendant Financial Recovery Services, Inc. (“FRS”), as and for its Answer to the Complaint of Plaintiff Robin R. Marshall (“Plaintiff”), denies each and every allegation set forth therein unless otherwise specifically admitted herein or otherwise qualified and states and alleges as follows:

1. FRS admits that Plaintiff purports to paraphrase and quote portions of the Fair Debt Collection Practices Act (“FDCPA”), but denies that it is applicable as there has been no violation of law.
2. FRS admits that the statutes provide for subject matter jurisdiction.
3. FRS has insufficient information and knowledge to either admit or deny the allegations.
4. FRS has insufficient information and knowledge to either admit or deny the allegations.
5. FRS has insufficient information and knowledge to either admit or deny the allegations.

6. FRS admits the allegations, upon information and belief.
7. FRS has insufficient information and knowledge to either admit or deny the allegations.
8. FRS admits the allegations.
9. FRS admits the allegations.
10. FRS admits the allegations.
11. FRS admits the allegations.
12. FRS admits the allegations.
13. FRS has insufficient information and knowledge to either admit or deny the allegations.
14. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
15. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
16. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
17. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
18. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
19. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

20. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
21. FRS admits the allegations.
22. FRS has insufficient information and knowledge to either admit or deny the allegations.
23. FRS has insufficient information and knowledge to either admit or deny the allegations.
24. FRS has insufficient information and knowledge to either admit or deny the allegations.
25. FRS admits that a debt that Plaintiff failed to pay was placed with it for collection.
FRS denies all remaining allegations.
26. FRS has insufficient information and knowledge to either admit or deny the allegations.
27. FRS admits the allegations.
28. FRS admits the allegations.
29. FRS has insufficient information and knowledge to either admit or deny the allegations.
30. FRS has insufficient information and knowledge to either admit or deny the allegations. FRS avers that it was the first letter sent to Plaintiff by FRS.
31. FRS has insufficient information and knowledge to either admit or deny the allegations.
32. FRS denies the allegations.
33. FRS denies the allegations.

34. FRS denies the allegations.
35. FRS adopts by reference all prior paragraphs as though fully set forth herein.
36. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
37. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
38. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
39. FRS has insufficient information and knowledge to either admit or deny the allegations.
40. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
41. FRS has insufficient information and knowledge to either admit or deny the allegations.
42. FRS has insufficient information and knowledge to either admit or deny the allegations.
43. FRS has insufficient information and knowledge to either admit or deny the allegations.
44. FRS has insufficient information and knowledge to either admit or deny the allegations.
45. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

46. FRS has insufficient information and knowledge to either admit or deny the allegations.
47. FRS states that the letter speaks for itself.
48. FRS states that the letter speaks for itself.
49. FRS states that the letter speaks for itself.
50. FRS admits the allegations.
51. FRS denies the allegations.
52. FRS denies the allegations.
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56. FRS denies the allegations.
57. FRS admits the allegations.
58. FRS denies the allegations.
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68. FRS denies the allegations.
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71. FRS denies the allegations.
72. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
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75. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
76. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
77. FRS denies the allegations.
78. FRS denies the allegations.
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83. FRS denies the allegations.
84. FRS denies the allegations.
85. FRS admits the allegations.

86. FRS denies the allegations.
87. FRS denies the allegations.
88. FRS denies the allegations.
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94. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
95. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
96. FRS states that the letter speaks for itself.
97. FRS states that the letter speaks for itself.
98. FRS denies the allegations.
99. FRS states that the letter speaks for itself.
100. FRS states that the letter speaks for itself.
101. FRS denies the allegations.
102. FRS denies the allegations.
103. FRS denies the allegations.

104. FRS denies the allegations.
105. FRS adopts by reference all prior paragraphs as though fully set forth herein.
106. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
107. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
108. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
109. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
110. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.
111. FRS has insufficient information and knowledge to either admit or deny the allegations.
112. FRS has insufficient information and knowledge to either admit or deny the allegations.
113. FRS has insufficient information and knowledge to either admit or deny the allegations.
114. FRS has insufficient information and knowledge to either admit or deny the allegations.
115. FRS has insufficient information and knowledge to either admit or deny the allegations.

116. FRS has insufficient information and knowledge to either admit or deny the allegations.

117. FRS has insufficient information and knowledge to either admit or deny the allegations.

118. FRS denies the allegations.

119. FRS states that the letter speaks for itself.

120. FRS denies the allegations.

121. FRS denies the allegations.

122. FRS denies the allegations.

123. FRS has insufficient information and knowledge to either admit or deny the allegations.

124. FRS states that the letter speaks for itself.

125. FRS denies the allegations.

126. FRS denies the allegations.

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144. FRS denies the allegations.

145. FRS denies the allegations.

146. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

147. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

148. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

149. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

150. FRS admits that Plaintiff purports to summarize, paraphrase or cite the referenced authority.

151. FRS denies the allegations.

152. FRS denies the allegations.

153. FRS admits that Plaintiff brings this matter as alleged, but denies that Plaintiff has an individual claim or that any class exists.

154. FRS admits the allegations but denies that any class exists.

155. FRS admits that Plaintiff seeks the finding and award as alleged, but denies that Plaintiff is entitled to either.

156. FRS denies the allegations.

157. FRS denies the allegations.

158. FRS denies the allegations.

159. FRS denies the allegations.

160. FRS admits that Plaintiff demands a jury trial but denies that Plaintiff is entitled to the same as there has been no violation of any law.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted. FRS complied with all applicable case law and was not required to include an interest disclosure in its collection letter.

SECOND DEFENSE

Plaintiff suffered no damage from the alleged violations of the FDCPA by FRS, which FRS denies, and therefore is not entitled to any award of damages, attorney fees or costs.

THIRD DEFENSE

All of FRS' actions have been in accordance with the FDCPA.

FOURTH DEFENSE

Any violation of the FDCPA by FRS, which FRS denies, was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

FIFTH DEFENSE

Any violation of the law or damage suffered by Plaintiff, which FRS denies, was due to the affirmative actions and/or omissions of Plaintiff or others and does not give rise to any liability of FRS.

SIXTH DEFENSE

FRS specifically denies that Plaintiff has suffered any actual damages; however if such damages do exist, FRS asserts that such actual damage claims are subject to the defense of failure to mitigate.

SEVENTH DEFENSE

Any technical violation of the FDCPA was not material and therefore not actionable.

EIGHTH DEFENSE

FRS asserts that Plaintiff's claim must be dismissed on jurisdictional grounds, as Plaintiff has not suffered a concrete and particularized injury in fact. Accordingly, Plaintiff lacks constitutional standing to bring this claim.

NINTH DEFENSE

FRS avers that Plaintiff's claims may be subject to a binding arbitration provision and class waiver.

WHEREFORE, FRS prays for an order and judgment of this Court in its favor against Plaintiff as follows:

1. Dismissing all causes of action against FRS with prejudice and on the merits;
2. Awarding FRS its reasonable attorney fees and costs, and,
3. Awarding FRS such other and further relief as the Court deems just and equitable.

Dated: September 19, 2019

By /s/ Michael T. Etmund

Michael T. Etmund, NY REG # 5168331

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Facsimile: (612) 877- 5050

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2019, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service, upon the following parties and participants:

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/s/ Michael T. Etmund
Michael T. Etmund